

**U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

Fiscal Year 2012

Annual Report to Congress  
Pursuant to the  
Notification and Federal Employee  
Antidiscrimination and Retaliation  
Act of 2002

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## **I. EXECUTIVE SUMMARY**

The U.S. Environmental Protection Agency (EPA or Agency) provides its Annual Report to Congress as required by Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174. As required, this report includes information related to the number of cases in Federal court pending or resolved in fiscal year (FY) 2012 and, in connection with those cases, their disposition; reimbursement(s) to the Judgment Fund; and the number of employees disciplined and the nature of the disciplinary action taken.

During FY 2012, there were a total of 12 cases pending before Federal courts. Among these cases, there were 11 claims of violation of Title VII; 3 claims of violations of the Rehabilitation Act; 5 claims of violation of the Age Discrimination in Employment Act; and one claim of violation of the Fair Labor Standards Act (sex discrimination).

Of the 12 cases noted above, one was settled during the reporting period. The settlement involved a total payment of \$175,000. In that settlement, no amount was separately designated for the payment of attorney's fees. The settlement amount will be reimbursed to the Judgment Fund.

Of the remaining 11 cases, one was dismissed with prejudice, one is pending appeal before the U.S. Court of Appeals for the 11<sup>th</sup> Circuit, and the remaining cases are pending adjudication in U.S. Federal District Courts.

## **II. BACKGROUND**

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," or, as it is more commonly known, the No FEAR Act. One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws." Public Law 107-174, Summary. In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." Public Law 107-174, Title I, General Provisions, section 101(1).

Section 203 of the No FEAR Act requires that each Federal agency submit an annual Report to Congress not later than 180 days after the end of each fiscal year. Agencies must report on the number of Federal court cases pending or resolved in each fiscal year and arising under each of the respective areas of law specified in the Act in which discrimination or retaliation was alleged. In connection with those cases, agencies must report the status or disposition of the cases; the amount of money required to be reimbursed to the judgment fund; and the number of employees disciplined. Agencies must also report on any policies implemented related to appropriate disciplinary actions against a Federal employee who discriminated against any individual, or committed a prohibited personnel practice; any employees disciplined under such a policy for conduct inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws; and an analysis of the data collected with respect to trends, causal analysis, and other information.

The Act imposes additional duties upon Federal agency employers intended to reinvigorate their longstanding obligation to provide a work environment free of discrimination and retaliation. The additional obligations contained in the No FEAR Act can be broken down into five categories:

- A Federal agency must reimburse the Judgment Fund for payments made to employees, former employees, or applicants for Federal employment because of actual or alleged violations of Federal employment discrimination laws, Federal whistleblower protection laws, and retaliation claims arising from the assertion of rights under those laws.
- An agency must provide annual notice to its employees, former employees, and applicants for Federal employment concerning the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws.
- At least every two years, an agency must provide training to its employees, including managers, regarding the rights and remedies available under the employment discrimination and whistleblower protection laws.
- Quarterly, an agency must post on its public website summary statistical data pertaining to EEO complaints filed with the agency.

The President delegated responsibility to the Office of Personnel Management (OPM) for issuance of regulations governing implementation of Title II of the No FEAR Act. OPM published final regulations on the reimbursement provisions of the Act on May 10, 2006; final regulations to carry out the notification and training requirements of the Act were published on July 20, 2006; and the final regulations to implement the reporting and best practices provisions of the No FEAR Act on December 28, 2006. The Equal Employment Opportunity Commission (EEOC) published its final regulations to implement the posting requirements of Title III of the No FEAR Act on August 2, 2006. The EPA has prepared this report based on the provisions of the No FEAR Act in accordance with OPM and EEOC's final regulations.

### **III. DATA**

#### **a. Civil Cases**

Section 203(a)(1) of the No FEAR Act requires that agencies include in their Annual Report "the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged." Section 724.302 of OPM's final regulations on reporting and best practices clarifies section 203 (1) of the No FEAR Act stating that agencies report on the "number of cases in Federal Court [district and appellate] pending or resolved...arising under each of the respective provisions of the Federal Antidiscrimination laws and Whistleblower Protection Laws applicable to them...in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved."

During FY 2012, there were a total of 12 cases pending before Federal courts. Among these cases, there were 11 claims of violation of Title VII; 3 claims of violations of the Rehabilitation

Act; 5 claims of violation of the Age Discrimination in Employment Act; and one claim of violation of the Fair Labor Standards Act (sex discrimination).

Of the 12 cases noted above, one was settled during the reporting period. The settlement involved a total payment of \$175,000. In that settlement, no amount was separately designated for the payment of attorney's fees. The settlement amount will be reimbursed to the Judgment Fund.

Of the remaining 11 cases, one was dismissed with prejudice, one is pending appeal before the U.S. Court of Appeals for the 11<sup>th</sup> Circuit, and the remaining cases are pending adjudication in U.S. Federal District Courts.

#### **b. Reimbursement to the Judgment Fund**

During FY 2012, the Agency was required to reimburse the Judgment Fund \$175,000, in connection with the one settled civil case. No amount was separately designated for the payment of attorney's fees. This is \$50,000 less than the amount the Agency was required to reimburse to the Judgment Fund in FY 2011.

#### **c. Disciplinary Actions (5 C.F.R. § 724.302 (a)(3) & (5))**

There were no employees disciplined in FY 2012 in connection with any cases described in paragraph (a) above, or for any other conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes prohibited personnel practices.

#### **d. Final Year-End Data Posted Under Section 301(c)(1)(B)**

The final year-end data posted pursuant to section 301(c)(1)(B) of the No FEAR Act is included in Appendix 1.

The final year-end data indicates that during FY 2012, there were 76 new administrative complaints of discrimination filed by 75 employees or applicants for employment. One Agency employee filed more than one complaint during the reporting period. Within the total inventory of 205 complaints, EPA's Office of Civil Rights (OCR) conducted 105 pre-complaint counselings; 61 investigations; and closed 49 cases including 13 final agency decisions, 11 final agency orders, 12 settlements, 3 dismissals and 11 withdrawals. There was one finding of discrimination in FY 2012.

FY 2012 complaint totals can be found in their entirety at Appendix 1 of this report.

#### **e. Policy Description on Disciplinary Actions (5 C.F.R. § 724.302(a)(6))**

The FY 2012 Agency EEO policy addresses a variety of topics including the prohibition of discrimination in the workplace and a reminder to all employees that the agency will review any finding of discrimination and take appropriate disciplinary or corrective action. The EEO policy, as well as information on addressing harassment and reasonable accommodation, was discussed in

the mandatory Successful Leaders program for all new Agency supervisors. The FY 2012 EEO Policy can be found in its entirety at Appendix 3 of this report.

Also, EPA Order 3110.6B, *Adverse Actions*, EPA Order 3120.1B, *Conduct and Discipline*, EPA Order 3120.2, *Conduct and Discipline Senior Executive Service* and applicable collective bargaining agreements, provide guidance to managers about the type of disciplinary actions that may be taken, when appropriate, in response to a finding of discriminatory behavior or conduct. Such actions may range from informal corrective actions such as a written warning to more formal disciplinary actions such as a suspension without pay or removal.

**f. No FEAR Act Training Plans (5 C.F.R. § 724.302 (a)(9))**

In FY 2011, OCR began a revamp of its entire web presence, to include a redesign of the NoFEAR Act online training. The redesigned training, was more user-friendly, interactive, and provided a more meaningful learning experience.

The EPA FY 2012 “*No FEAR Act Training Course*” was hosted on the EPA eLearning site. The EPA eLearning site is an Internet-based training tool designed to support cross-functional training development needs for EPA employees. The site can be accessed 24 hours a day, 7 days a week, from work or from home. This access allows for maximum flexibility to meet the No FEAR Act training requirements. OCR, the Regional EEO Officers and the Headquarters Program Management Officers closely tracked and monitored the successful completion of this training by individual offices, resulting in a 98% completion rate, Agency-wide, for the year. This percentage rate was a marked improvement from the 95% completion rate the previous year.

**IV. ANALYSIS OF TRENDS, CAUSAL ANALYSIS AND PRACTICAL KNOWLEDGE GAINED THROUGH EXPERIENCE (5 C.F.R. § 724.302 (a)(7))**

At the conclusion of FY 2012, the bases of alleged discrimination most often raised were: (1) retaliation; (2) sex; and (3) race. The 76 EEO complaints filed at EPA in FY 2012 contained 43 allegations of retaliation, 41 allegations of sex discrimination, and 39 allegations of race discrimination. While these totals are slightly higher than in the previous year, these totals are within the general average range of historical complaint totals for these bases. Considering the aggregate size of the workforce, the data shows that the 0.34% of the Agency workforce of 18,066 employees that has filed complaints. This number falls well below the government-wide average of 0.53% of the workforce who filed complaints in FY 2011. At the time of reporting, government-wide totals for FY 2012 were not yet available.

The Agency saw a 19% increase in the number of complaints filed from FY 2011 to FY 2012. We believe that the increase in administrative complaints filed can be attributed to the resource limitations in FY 12 as compared to FY 11, which resulted in fewer approvals for training opportunities, staff development and award dollars. We also believe that because 98% of EPA’s employees received training on the EEO laws, rights and remedies, this education identified the EEO process as a mechanism available to them to oppose otherwise fiduciarily dictated denials of opportunities.

EPA continues to stress training as a method for ultimately reducing the number of Federal court judgments, awards, and formal complaints as managers and supervisors expand their knowledge of their responsibilities to promote equal employment opportunity.

EPA completed investigations for complaints pending during FY 2012 with an average processing time of 349 days, slightly above the FY 2011 Government-wide average of 346 days. In FY 2012, the Agency focused heavily on the completion of FADs that originated prior to FY 2010. As a result, remarkable progress was made in reducing the backlog. In FY 2011, the Agency had 16 Final Agency Decisions (FADs) pending that were over 1,000 days old. At the end of the reporting period, the Agency had no FADs pending over 1,000 days old. The average age for FADs pending in FY 2012 was 517 days. The prioritization of older matters meant that the average age of completed cases went up. However, during FY 2013, the Agency will make significant efforts to improve the proportion of cases adjudicated timely. As a result, both the days-to-completion and timeliness rate are expected to improve dramatically

## **V. ADJUSTMENTS TO BUDGET (5 C.F.R. § 724.302(a)(2)(ii))**

During FY 2012, the Agency was required to reimburse the Judgment Fund \$175,000, in connection with the one settled civil case. No amount was separately designated for the payment of attorney's fees.

## **VI. ACTIONS PLANNED OR TAKEN TO IMPROVE COMPLAINT OR CIVIL RIGHTS PROGRAMS (5 C.F.R. § 724.302 (a)(7)(iv))**

Over the past year, EPA's civil rights program made significant progress, and the Administrator has taken several actions to strengthen EPA's commitment to civil rights, equal employment opportunity and diversity in the workplace:

- EPA has set a record 98% completion rate for training its employees under the NoFEAR Act.
- Within the EPA, every member of the Senior Executive Service now has a performance standard related to equal employment opportunity and diversity in the workplace. Senior managers must outline the specific initiatives and actions they have personally undertaken and the results or effectiveness of those actions. At the end of every performance cycle, the Director of the Office of Civil Rights, Performance Review Board members, and Executive Review Board members review these self-assessments to verify that the respective rating for the EEO performance standard is a reflection of the accomplishments listed.
- Informational materials about the benefits of ADR were made available throughout the Agency in print and on the Agency's website. The Agency also conducts training on ADR and how to avoid lengthy and costly EEO complaints. We will investigate why employees' participation rate in the ADR program is lower than anticipated by distributing an employee survey or similar assessment and take appropriate action based on the results of the investigation.
- EPA has taken steps to improve the timeliness of EEO investigations. Of particular note is the new requirement for contractors to deliver investigations on schedule or receive

reduced payment and/or terminate the contract. All EPA investigators and counselors received the required annual training and/or refresher training in accordance with MD 110.

- EPA works to comply with orders from administrative judges in a timely manner, and this is a factor that is included in the performance standard of the Assistant Director for the Office of Civil Rights, Employment Complaints Resolution Staff (ECRS). In addition, EPA has systems in place to ensure that the Agency initiates any monetary or other relief in a timely manner.
- In FY 2012, OCR's ECRS attended FAD writing training with EPA's Office of General Counsel, related to writing acceptance and dismissal letters, analyzing hostile work environment claims and conducting thorough investigations.
- OCR also continues to post all No FEAR statistics on the OCR website on a quarterly basis.
- Members of OCR management make presentations during the monthly new employee orientations to ensure that all new employees are notified of the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws.
- In FY 2012, OCR worked to make critical changes to its counseling program by reducing the larger number of collateral counselors into a smaller, elite cadre of highly-trained professionals and by centralizing the assignment of counselors. During the limited time this new process has been in place, the timeliness, quality of EEO Counselor's Reports, and both the utilization and success rate for ADR have all significantly improved. For FY 2011, ADR offer rate was 29.9% and the acceptance rate was 19.6%. This year, the ADR offer rate was 84.7% and the acceptance rate was 33.7%, which demonstrates significant improvement.
- The Civil Rights Director and EEO Officials across the Agency participate in briefings, listening sessions, and brainstorming sessions to discuss EEO with managers, senior leaders and employees in order to identify and address any barriers and specific action items that can continue to improve the Agency's EEO and civil rights program.



## APPENDIX 1

# Equal Employment Opportunity Data Posted Pursuant to the No Fear Act: EPA (and below)

*For 4th Quarter 2012 for period ending September 30, 2012*

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2012Thru09-30
	2007	2008	2009	2010	2011	
Number of Complaints Filed	63	79	77	70	64	76
Number of Complainants	58	72	71	63	61	75
Repeat Filers	6	9	8	9	3	1
Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2012Thru09-30
	2007	2008	2009	2010	2011	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>						
Race	32	42	33	39	25	39
Color	8	14	9	14	10	13
Religion	2	2	1	5	2	9
Reprisal	33	37	35	47	39	43
Sex	20	28	36	28	29	41
PDA	0	0	0	0	0	0

National Origin	8	10	6	14	10	13
Equal Pay Act	1	0	0	0	2	1
Age	27	28	37	28	21	35
Disability	18	16	25	21	24	23
Genetics	0	0	0	0	0	0
Non-EEO	0	1	0	0	1	8
<b>Complaints by Issue</b>	<b>Comparative Data</b>					
	<b>Previous Fiscal Year Data</b>					<b>2012Thru09-30</b>
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	
Appointment/Hire	0	0	0	2	1	5
Assignment of Duties	5	12	6	18	12	11
Awards	1	4	2	6	2	5
Conversion to Full-time	0	1	0	0	0	2
<b>Disciplinary Action</b>						
Demotion	0	1	0	0	0	0
Reprimand	2	3	3	3	3	2
Suspension	3	0	2	2	3	2
Removal	0	0	1	0	1	2
Other	1	0	0	3	2	4
Duty Hours	0	0	0	1	3	3
Evaluation Appraisal	8	17	9	14	11	21
Examination/Test	0	0	0	0	1	0
<b>Harassment</b>						
Non-Sexual	27	30	36	35	29	30

Sexual	0	1	0	1	1	1
Medical Examination	0	0	0	0	0	0
Pay (Including Overtime)	3	5	2	3	4	4
Promotion/Non-Selection	21	28	24	24	18	25
Reassignment						
Denied	3	1	0	4	3	2
Directed	2	2	2	6	1	4
Reasonable Accommodation	8	3	6	2	8	7
Reinstatement	0	0	0	0	0	0
Retirement	0	0	1	0	0	1
Termination	5	4	7	4	9	5
Terms/Conditions of Employment	10	11	8	16	10	18
Time and Attendance	7	13	7	6	6	17
Training	2	6	7	6	4	10
Other	2	0	0	0	0	7
Processing Time	Comparative Data					
	Previous Fiscal Year Data					2012Thru09-30
	2007	2008	2009	2010	2011	
Complaints pending during fiscal year						
Average number of days in investigation	228.02	205.84	217.32	216.85	236.82	348.80
Average number of days in final action	224.72	261.40	192.96	205.02	398.16	319.77
Complaint pending during fiscal year where hearing was requested						

Average number of days in investigation	229.46	215.97		211.79		208.86	242.18	354.84					
Average number of days in final action	107.86	44.22		125.75		15.08	154.67	136.53					
Complaint pending during fiscal year where hearing was not requested													
Average number of days in investigation	226.00	183.18		225.34		228.69	218.60	337.41					
Average number of days in final action	327.56	354.48		224.59		403.22	564.18	569.64					
Complaints Dismissed by Agency		Comparative Data											
		Previous Fiscal Year Data								2012Thru09-30			
		2007		2008		2009		2010				2011	
Total Complaints Dismissed by Agency		16		11		10		7		10		3	
Average days pending prior to dismissal		303		339		111		308		981		434	
Complaints Withdrawn by Complainants													
Total Complaints Withdrawn by Complainants		10		8		3		2		4		11	
Total Final Agency Actions Finding Discrimination		Comparative Data											
		Previous Fiscal Year Data								2012Thru09-30			
		2007		2008		2009		2010				2011	
		#	%	#	%	#	%	#	%	#	%	#	%
Total Number		0		0		0		0		0		1	

Findings												
Without Hearing	0	0	0	0	0	0	0	0	0	0	1	100
With Hearing	0	0	0	0	0	0	0	0	0	0	0	0
Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2012Thru09-30	
	2007		2008		2009		2010		2011			
Note: Complaints can be filed alleging multiple bases.The sum of the bases may not equal total complaints and findings.	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		0		1	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	1	100
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0

<b>Findings After Hearing</b>	0		0		0		0		0		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
<b>Findings Without Hearing</b>	0		0		0		0		0		1	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	1	100
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0

Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings of Discrimination Rendered by Issue	Comparative Data											
	Previous Fiscal Year Data										2012Thru09-30	
	2007		2008		2009		2010		2011			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		0		1	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	1	100

Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0
<b>Findings After Hearing</b>	0		0		0		0		0		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to	0	0	0	0	0	0	0	0	0	0	0	0



Full-time												
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0

Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0
<b>Findings Without Hearing</b>	0		0		0		0		0		1	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	1	100
Sexual	0	0	0	0	0	0	0	0	0	0	0	0

Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0
Pending Complaints Filed in Previous Fiscal Years by Status				Comparative Data								
				Previous Fiscal Year Data					2012Thru09-30			
				2007	2008	2009	2010	2011				
Total complaints from previous Fiscal Years				88	75	95	122	116	121			
Total Complainants				70	70	87	107	94	105			
Number complaints pending												
Investigation				3	4	4	3	10	6			
ROI issued, pending				0	0	0	1	0	3			

Complainant's action						
Hearing	0	3	9	12	32	36
Final Agency Action	17	18	43	35	22	18
Appeal with EEOC Office of Federal Operations	0	0	0	0	1	0
Complaint Investigations	Comparative Data					
	Previous Fiscal Year Data					2012Thru09-30
	2007	2008	2009	2010	2011	
Pending Complaints Where Investigations Exceed Required Time Frames	9	19	13	10	25	32

## **APPENDIX 2**

### **Anti-Harassment Policy**

#### **MEMORANDUM**

**FROM:** Administrator Lisa P. Jackson

**TO:** All EPA Employees

As a matter of policy, harassment of any kind will not be tolerated at the U.S. Environmental Protection Agency. When harassment is directed at an individual because of a lawfully protected basis and is sufficiently severe or pervasive that it creates a hostile work environment or takes the form of a tangible employment action, it is unlawful. It is EPA policy to ensure that appropriate measures are implemented to prevent harassment, either sexual or nonsexual, in the workplace and to correct harassing conduct before it becomes severe or pervasive. EPA policy also strictly prohibits any retaliation against an employee who reports a concern about workplace harassment or assists in any inquiry about such a report.

For the purposes of this policy, unlawful harassment is defined as any unwelcome verbal or physical conduct based on race; color; sex, including pregnancy and gender identity/expression; national origin; religion; age; prior protected EEO activity; protected genetic information; sexual orientation or status as a parent when:

- a) the behavior can reasonably be considered to adversely affect the work environment; or
- b) an employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Sexual harassment can be either a form of harassment based on a person's sex that need not involve conduct of a sexual nature or harassment involving any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature when:

- a. submission to such conduct is made explicitly or implicitly a term or condition of an employee's job, pay or career;
- b. submission to or rejection of such conduct by an employee is used as a basis for career or employment decisions affecting that employee; or
- c. such conduct has the purpose or effect of unreasonably interfering with an employee's performance or creates an intimidating, hostile or offensive environment.

Sexual harassment need not involve members of the opposite sex and can be perpetrated by and against members of either sex.

Examples of workplace harassment include:

- Oral or written communications that contain offensive name calling, jokes, slurs, negative stereotyping, hostility or threats. This includes comments or jokes that are distasteful or targeted at individuals or members of the lawfully protected bases set forth above.
- Nonverbal conduct, such as staring, leering and giving inappropriate gifts.
- Physical conduct, such as assault or unwanted touching.
- Visual images, such as derogatory or offensive pictures, cartoons or drawings. Such prohibited images include those in hard copy or electronic form.

The EPA does not permit harassment by or against anyone in the workplace. This includes any employee, applicant for EPA employment, grantee, contractor, Senior Environmental Employment enrollee or Federal Advisory Committee Act member. Workplace harassment should be reported immediately by the affected person to a first-line supervisor, a higher-level supervisor or manager in her or his chain of command, the Office of Inspector General or Labor and Employee Relations staff, as appropriate. Supervisors, in consultation with their human resources or legal offices, must conduct prompt, thorough and impartial inquiries.

If necessary and to the extent possible, measures must be taken to safeguard the anonymity of employees who file complaints. If management, in consultation with legal counsel, determines that harassment has occurred, it must be corrected as soon as possible. Harassing conduct by EPA employees need not rise to the level of unlawful harassment for it to constitute misconduct subject to corrective or disciplinary action.

In addition, EPA employees or applicants for employment may also use the complaint process established by the Equal Employment Opportunity Commission to file a complaint of harassment based on race, color, sex, religion, national origin, age, disability, prior protected EEO activity and protected genetic information for individual redress. To invoke that process, EPA employees and applicants must contact an EEO counselor within 45 days of an alleged incident of harassment. Reporting harassment to a supervisor in accordance with the previous paragraph does not satisfy this requirement and does not invoke the EEOC's process. EPA employees or applicants for employment may also report harassment based on sexual orientation and status as a parent to the EPA Office of Civil Rights.

Should you have any questions or need additional information about this policy, please contact the EPA Office of Human Resources at (202) 564-4600 or the EPA Office of Civil Rights at (202) 564-7272.

## **APPENDIX 3**

### **MEMORANDUM**

**SUBJECT:** 2012 Equal Employment Opportunity Policy Statement

**FROM:** Lisa P. Jackson

**TO:** All Employees

Fostering a fair and diverse work environment is essential to our work as One EPA and our service to the American people. I am proud to reaffirm today the U.S. Environmental Protection Agency's commitment to equal employment opportunity in the workplace.

The EPA cannot and will not tolerate discrimination based on race; color; religion; sex, including pregnancy and gender identity or gender expression; national origin; physical or mental disability; age; genetic information; sexual orientation; status as a parent; marital status; political affiliation; or retaliation based on previous EEO activity. Harassment – sexual or conduct – of any employee or applicant for employment is also unacceptable and prohibited by law.

I expect our management team to continue to provide first-class leadership in support of equal employment opportunity. I also ask that EPA managers and employees take responsibility for treating each other with dignity and respect, reporting discriminatory conduct and preventing all types of discrimination, including harassment. The agency will review any finding of discrimination and take appropriate disciplinary or corrective action.

The EPA promotes the use of alternative dispute resolution methods to resolve workplace disputes or EEO complaints. Managers are reminded that their participation in agency-approved alternative dispute resolution efforts to resolve employee EEO complaints is required, absent extraordinary circumstances as determined by the Office of Civil Rights' director or designee.

Any employee, manager or applicant for employment who believes he or she has been subjected to discrimination has a right to seek redress by contacting the EPA's Office of Civil Rights' employment complaints resolution staff at (202) 564-7272 or an EEO officer at the regional or laboratory level within 45 calendar days of the alleged discriminatory event.

A professional, productive and inclusive workplace is essential to the EPA's mission to protect human health and the environment. Unlawful discrimination in the workplace, including retaliation and harassment, undermines the achievement of our agency's mission. I appreciate your shared commitment to equal opportunity at the EPA, and look forward to continuing our work together.